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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/293,011	04/16/1999	YVETTE MARIE GORDON	07442009001	4298
26161	7590	08/04/2005	EXAMINER	
FISH & RICHARDSON PC			SRIVASTAVA, VIVEK	
P.O. BOX 1022			ART UNIT	
MINNEAPOLIS, MN 55440-1022			PAPER NUMBER	
			2617	
DATE MAILED: 08/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/293,011

Applicant(s)

GORDON ET AL.

Examiner

Vivek Srivastava

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 73-127 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 73-127 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

For the purpose of brevity, since there are no amendments to the claims the previous office action is hereby incorporated by reference.

Response to Arguments

(1) Applicant argues that unlike the “push-based” system of Applicant’s, Burns teaches a “pull-based” system. As a result, the content manager, claimed by applicants, is neither inherent or necessary in Burns, as a content manager would not be required in a “pull-based” system.

First the Examiner would like to draw Applicant’s attention to Burns column 11 lines 56 – 60, which states “Although not required, in this implementation, the content may be **pushed** top down from the content provider over the Internet and thus, the system may be referred to as a **push-caching** system.” Burns clearly discloses an implementation of a push-based system. After reviewing Applicant’s arguments, it appears Applicant’s admit that content manager may not be required in a pull-based system but would be necessary in a “push-based” system.

Second the Examiner respectfully submits that, even if Burns fails to disclose a “push-based” system, which is not an admission by the Examiner that he does, the claims as recited fail to clearly indicate a “pushed-based” system. Applicant’s correctly point out that in a “pushed-based system, a local server passively waits for some other

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entity to place content in cache.” However, the claims fail to specifically point out where the content manager is located. The Examiner respectfully submits that there must inherently be a content manager or some processor at the content server which is in communication with the local servers which automatically provide selected viewable data objects to be downloaded to the local servers per request. In other words, in any pull based system, there must be a processor or content manager at both ends of the system to enable communication and downloading or transferring of data. Thus there must inherently be a content manger or processor in communication with memory server at the content server to enable retrieving and transmitting selected viewable data objects to the local server.

(2) Applicant further argues that “A necessary corollary is that if there exists even a single counter-example , i.e. if there exists the possibility that a content manager is not present in Burns, or that a content manager lacking even one limitation is present, a rejection based on inherency is improper.” Applicant further argues “The last three sentences of passage (a) disclose different kinds of subscriber units. These are clearly irrelevant to content managers” and “The first and second sentences of passage (a) do not preclude the existence of the claimed content manager. On the other hand, neither do they preclude its absence. This means that passage (a) fails to show that a content manager as claimed “necessarily flows from the teaching” of Burns.

As discussed above in (1), a content manager as claimed “necessarily flows from the teaching” of Burns, as a result, Applicant's arguments are not persuasive.

(3) Applicant argues the Office to carefully consider the language of claim 121, which states “transmitting the viewable data objects to local servers, the viewable data objects being selected in response to different priorities of the local servers for viewable data object content”. Thus the office should be searching for disclosure of priorities attached to local servers, not to video objects.

The Examiner respectfully submits, the claim as recited, can apply to both local servers and video objects, however, with respect to priorities for local servers, Burns clearly teaches this limitation. Referring to column 10 lines 23 – 36, not only is priority given to content, the local servers also have different priorities. In other words, one local server will have a priority of one type of content over another local server i.e., the service provider server in Seattle will have priority for receiving entertainment or news based on demographics. The claims simply recites “...data objects being selected in response to different priorities of the local server for viewable data content..”. Each local server in Burns has a different priority for a different kind of content. As a result, Applicant's arguments are not persuasive.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (571) 272-7304. The examiner can normally be reached on Monday – Friday from 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272 – 7331. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vs
7/26/05



VIVEK SRIVASTAVA
PRIMARY EXAMINER